The Hon'ble Sri Justice D.S.R.Varma

Writ Petition No.23926 of 1995

Dated: 22-8-2006

Between:

Smt. D.Radha. ..Petitioner

And

1.Government of Andhra Pradesh, represented by its Secretary, Higher Education Department, Secretariat Buildings, Hyderabad, and two others. ... Respondents.

The Hon'ble Sri Justice D.S.R.Varma

Writ Petition No.23926 of 1995

Oral Judgment:-

Heard both sides.

The petitioner seeks a direction to the respondents to

regularise her services as Junior Assistant in the Hindi Maha Vidyalaya (College of Arts, Commerce & Science), Nallakunta, Hyderabad, and pay regular salary and all other allowances due to her in the Government scales of pay from the date of her appointment and release grant-in-aid to the post of the petitioner, or in the alternative to direct the respondents to absorb the petitioner in the post of Sore Keeper in the said College.

Factual background, in brief, appears to be that the petitioner was employed in the 3rd respondent College as Junior Assistant in the year 1992, on temporary and daily-wage basis, on a consolidated remuneration by the management. Even as on today, she claims that she has been continuing as such. She sought for regularisation of her services in view of the long service rendered by her in the 3rd respondent College. She claims to have made a representation to the Commissioner, College Education, Hyderabad, seeking regularisation of her services, the result of which is not known. Hence, the present writ petition.

A detailed counter-affidavit has been filed on behalf of respondents 1 and 2 controverting the averments made by the petitioner in the affidavit filed in support of the writ petition.

Though the petitioner made the College as party-respondent (as third respondent in this writ petition), the 3rd respondent did not file any counter-affidavit vindicating its stand.

From the material available on record, it appears that the petitioner was engaged by the third respondent College as a Junior Assistant, on a consolidated remuneration, on daily-wage and temporary basis only. Though the petitioner had filed number of material papers, she did not file any appointment order issued to her by the 3rd respondent-College.

It is obvious that the petitioner is fully aware of the nature of her appointment, i.e., on temporary basis with consolidated remuneration. Therefore, she is deemed to have the knowledge of her status of employment/engagement in the 3rd respondent-College and the consequences thereof.

A temporary or *ad hoc* appointment, as the nomenclature denotes, is not on regular basis. The rights of such temporary employee are very limited and are governed by the terms and conditions enumerated in the order of appointment. In other words, such appointment is subject to the terms and conditions mentioned in the order of appointment. Having accepted the appointment with

those conditions, it is not for the employee, like the petitioner, to claim or seek the status of a regular employee on any ground.

Normally, if there is a permanent vacancy, i.e., sanctioned, recognised, or regular vacancy, the same shall have to be filled up in accordance with certain guided principles. Even if any person is appointed or engaged on temporary or ad hoc basis in such regular vacancy, out of acute necessity or to meet any exigency, he/she shall be replaced soon by resorting to regular mode of selection and appointment as per Rules.

Certain appointments may be irregular -- for example, an appointment without sanction of the competent authority. At times, the employer may make such temporary or ad hoc appointments in order to meet certain exigency or out of acute necessity. Such appointment/engagement, by itself, will not clothe the appointee to claim any rights or parity with a regularly appointed person. An appointment can also be illegal -- for example, if a person devoid of eligibility or educational qualifications etc., is appointed/employed, such appointment is illegal. There is a clear distinction between irregular and illegal appointments.

Law is well-settled that illegal appointments cannot be sustained. Illegal appointments cannot be accepted nor need not necessarily be accepted by the employer or by the State merely because such an appointment was made. In other words, there is no indefeasible right for an employee, who was engaged/appointed temporarily, to seek regularisation of his/her services merely because he/she is appointed/engaged/employed, let alone the nature of such employment. As already noticed, the illegality committed in making an appointment, on temporary or ad hoc basis, cannot be perpetuated further, and, whereas, regularisation of an irregular appointment can be made by the employer, in exercise of its discretion in certain circumstances, but not in all circumstances.

In other words, if an appointment is made, which can be ratified or capable of being recognised or approved as regular employment at a later point of time by the competent authority, then regularisation of services of such appointee can be made, by following the relevant Rules and guidelines and Government Orders governing the subject.

Therefore, an illegal appointment cannot be recognised by the Court, under all circumstances, but, whereas, an irregular appointment can be or may be regularised at a later point of time

by the employer, subject to fulfillment of the prescribed criteria laid down in that behalf.

It may not be out of place to mention that time and again the Supreme Court ruled that there is no indefeasible right for any individual to seek appointment merely because his name is found in the list of selected candidates. With regard to regularisation of services also, the Supreme Court repeatedly held that illegal appointments cannot be regularised.

The Supreme Court also repeatedly held that no person can insist an employer to fill up a particular vacant post, as filling up of a vacancy is the prerogative of the employer, which will depend upon various factors such as the need, financial viability and continued utility. This order need not be burdened with the details and citations of those cases, which are umpteen.

I am fortified with the latest judgment of the Constitution Bench of the Supreme Court in ***Secretary of State of Karnataka vs. Umadevi*** [1]**.** Surveying entire case-law on the subject, the Supreme Court observed that appointments made without following the due process or the rules for appointment will not confer any right on the appointees and that the Court should not direct their absorption or regularisation or en-engagement or making them permanent. It is rather useful to notice the pertinent observations made by the Supreme Court, which runs thus:

" Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. The courts cannot impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly. A direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking may cause the financial burden on such undertaking to become so heavy that the undertaking itself may collapse under its own weight. It is not as if this has not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

The State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should not be taken note of for regularisation. The Supreme Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage

or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. It is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment".

The Supreme Court further observed:

" There may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by the Supreme Court in the cases affirmed in this judgment and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals. The process must be set in motion within six months from the date of this judgment. Regularisation, if any already made, but not *sub judice*, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent those not duly appointed as per the constitutional scheme".

Therefore, on the same analogy, an employee who got appointed on temporary or ad hoc basis with a consolidated remuneration, cannot have an indefeasible right to have such appointment regularised inasmuch as the terms and conditions and the consequences of appointment would naturally be incorporated in the very order of appointment itself and the employee has no other right except to abide by such terms and conditions.

Reverting back to the case on hand, at page No.4 of the counter-affidavit filed by respondents 1 and 2, it is categorically stated, based on the letter dated 28.11.1995 written by the third respondent-College, that petitioner's appointment was not in accordance with the Rules and no appointment order was issued by the management of college.

Though the petitioner had filed a reply-affidavit to the

counter-affidavit of respondents 1 and 2, she did not say anything regarding the letter, dated 28.11.1995, of the third respondent-College.

It is, therefore, clear that there is no written appointment order issued to the petitioner. Therefore, the petitioner is supposed to have knowledge of the nature and consequences of her appointment/employment.

Engagement of a person, on temporary and on consolidated remuneration, to do certain work by the employer, without any order to that effect in writing, incorporating the conditions of appointment, is of no consequence, let alone creating any rights in such appointee at a later point of time.

As could be seen from the counter-affidavit filed by respondents 1 and 2, there are no sanctioned posts of Junior Assistants available in the 3rd respondent College. This again makes it clear that for the purpose of absorption or regularisation of the petitioner there must be a clear vacancy and in the absence of such clear or sanctioned vacancy of Junior Assistant, the services of the petitioner can, at no stretch of imagination, be directed to be regularised, particularly in the light of the fact that there was no written order of appointment at all issued to the petitioner.

After all, the basic principle is that any employment is in the nature of a contract between the employer and the employee and subject to certain conditions and is governed and guided by certain Rules and Regulations. Unfortunately, here is a case where the petitioner was engaged to do some work in the third respondent College on temporary basis, on consolidated remuneration, with no written order of appointment.

In other words, it was an oral appointment with a fixed monthly remuneration and such an appointment, as I already opined supra, is incapable of elevating the status of the petitioner to that of a regular employee.

The other contention urged by the learned Counsel for the petitioner is that the petitioner is entitled to salary and allowances on par with regularly appointed Junior Assistants as she is discharging the same duties that are being discharged by the regularly appointed Junior Assistants, on the principle of 'equal pay for equal work'.

In this regard, already pointed out, the nature of appointment of the petitioner is absolutely distinct from that of the regular

employee and it is not demonstrably clear as to whether the petitioner had been performing the same duties as that of a regularly appointed Junior Assistant or not.

Furthermore, there is no recorded material made available to this court in this regard. Therefore, this question cannot be gone into in this writ petition. Even otherwise, as already noticed, since there is no written order of appointment at all issued by the third respondent College in favour of the petitioner, the petitioner ought to have the knowledge of the consequences of her employment/engagement and cannot ask for the salary and pay scale as are applicable to regularly appointed persons.

For the aforementioned reasons, I do not find any merit in this writ petition and the same is liable to be dismissed.

In the result, this writ petition is dismissed. No costs.

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22-8-2006 D.S.R.Varma,J

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[1] (2006 (4) SCC) 1